U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN C. COREY and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINSITRATION MEDICAL CENTER, Lebanon, PA

Docket No. 02-1875; Submitted on the Record;
Issued December 3, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a back injury in the performance of duty on October 31, 2000.

On November 21, 2000 appellant, then a 49-year-old registered nurse, filed a claim alleging that she sustained a low back injury in the performance of duty on October 31, 2000. She claimed that the injury occurred when she helped two other people move a large man from a geriatric chair to a wheelchair. She stopped work from November 19 to 28, 2000. By decision dated January 11, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she failed to establish the alleged employment incident occurred.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back injury in the performance of duty on October 31, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The term "injury," as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.[6]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[7] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[8] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[9] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10]

In the present case, appellant has established that the October 31, 2000 incident occurred. She consistently indicated that she injured her low back at work on October 31, 2000 when she helped move a patient into a wheelchair. Appellant indicated that she delayed in reporting the October 31, 2000 employment incident because she initially thought that her back condition would improve on its own.[11] There is no strong or persuasive evidence, which would cast doubt on appellant's description of the October 31, 2000 employment incident.

Appellant did not, however, submit sufficient medical evidence to establish that she sustained a back injury in the performance of duty on October 31, 2000. She submitted a November 27, 2000 form report in which Dr. Charles R. Gnau, an attending physician

[4] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[5] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

[7] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[8] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[9] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[10] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

[11] Appellant reported her injury to a supervisor on November 15, 2000 and filed her claim on November 21, 2000.

specializing in general practice, indicated that she reported a back injury on October 31, 2000 due to lifting a patient. He diagnosed "lumbosacral strain" checked a "yes" box indicating that appellant's condition was due to the reported injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[12] Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. Gnau did no more than check "yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. The opinion of Dr. Gnau is of limited probative value for the further reason that he did not provide a complete description of the October 31, 2000 employment incident and did not provide any findings of his examination.[13]

The January 11, 2001 decision of the Office of Workers' Compensation Programs is affirmed as modified.[14]

Dated, Washington, DC
December 3, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[13] It should be noted that Dr. Gnau did not examine appellant until several weeks after the October 31, 2000 incident.

[14] Appellant submitted additional evidence after the Office's January 11, 2001 decision, but the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).